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OF THE
UNITED STATES OF AMERICA

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***In the Matter of Framework for Broadband Internet Service,* GN Docket No. 10-127**

Dear Ms. Dortch:

The U.S. Chamber of Commerce[1] is pleased to submit these comments[2] to the Federal Communications Commission ("Commission") in response to the Notice of Inquiry ("NOI") in the above-captioned proceeding.[3]

I. Introduction

To the Chamber, broadband is more than just a technology issue. Rather, broadband is a vital tool for stimulating job growth, fostering economic development, and improving every aspect of our society from education to healthcare.

The Chamber urges the Commission to maintain its current light regulatory approach toward broadband, and not to impose any form of Title II regulation on broadband service providers. The broadband industry is extremely competitive, and there is no market failure

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[1] The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

[2] The Chamber represents many different types of companies and economic sectors with different concerns in the telecommunications and Internet areas and while the position stated in the filed comments with the Commission is the official position for the U.S. Chamber of Commerce, our comments do not reflect the views of all company members.

[3] *In the Matter of Framework for Broadband Internet Service*, GN Dkt. No. 10-127, FCC 10-114 (rel. June 17, 2010). ("*NOI*").

that justifies government intrusion into this dynamic marketplace. Title II broadband regulation jeopardizes private-sector investment in broadband infrastructure, innovation, consumer choice, and job creation. Old monopoly telephone rules should not be applied to new broadband networks. Congress, not the Commission, has the power to decide the appropriate regulatory framework for broadband and whether any changes are necessary.

II. The Marketplace, not Government Fiat, is the Best Way to Encourage Broadband Infrastructure Investment, Create Jobs, and Enhance Consumer Choice

Generally, the Chamber believes that when a marketplace is governed effectively by market dynamics, the government should seek to minimize regulatory burdens. Any policy guideposts established by the government should ultimately seek to empower customers, not regulators. Accordingly, the federal government should seek regulatory predictability and parity, and should refrain, to the maximum extent possible, from regulating broadband services so as to provide certainty in the market place, and foster investment in broadband technology and infrastructure.

A recent Chamber policy study on broadband urged policymakers to be guided by the following foundational principles:[4]

- The broader advanced communications marketplace, including the broadband and wireless sectors, has responded positively to the pro-investment policies designed by a bipartisan Congress and the FCC to spur innovation, investment, and network build-out;

- Government intervention in the broadband marketplace through the imposition of restrictive policies, such as those that would control how providers price, market, and manage their products and services, would deter innovation, halt competition, and thwart the continued enhancements of broadband networks;

- Network management allows network owners to manage congestion, prevent jitter and latency, ensure a reliable quality of service, and otherwise optimize network performance for all users;

- Consumers would be negatively impacted by efforts to restrict network management. In the short term, the Internet experience of the majority of average users could be negatively impacted by high-capacity users, the actions of which can crash a network or greatly congest it. In the long-term, such policies could impair the effectiveness of lifesaving telemedicine and other applications that ride the network and require connections that are jitter-free; and

[4] Charles M. Davidson and Michael J. Santorelli, *Network Effects: An Introduction to Broadband Technology & Regulation,* Report to the U.S. Chamber of Commerce, Dec. 2008, p. 2, *available at:* http://www.uschamber.com/issues/index/technology/broadband_pubs.htm.

- The ability of network managers to prioritize emergency and lifesaving data is necessary in order to realize the full potential of many new telemedicine, telehealth, and distance learning services and applications. Thus, stripping network owners of the ability to effectively manage their networks imperils users and decreases incentives to further innovate in this space.

III. The Chamber Opposes Any Form of Title II Broadband Regulation

In *Comcast Corp. v. FCC,*[5] the Court held that the Commission failed to establish the necessary legal authority to regulate Comcast's network management practices. The Chamber believes that the Commission retains sufficient authority under Title I and other provisions to implement USF reform and other critical components of the National Broadband Plan.

The Chamber opposes any effort by the Commission to classify broadband as a Title II common carrier service in an attempt to circumvent the Court's decision. Specifically, the Chamber opposes both the classification of broadband Internet connectivity as a "telecommunications service" to which all the requirements of Title II of the Communications Act would apply, and Chairman Genachowski's "third-way" proposal that would subject broadband service providers to Title II regulation, but would at the same time forbear from applying certain provisions.

Regulating broadband under Title II would harm consumers and the U.S. economy. Reversing more than a decade's worth of decisions and policy would plunge the industry into years of litigation and cause extreme regulatory uncertainty. By engaging in such a regulatory overreach, the Commission would deter private-sector investment in broadband technology, harm innovation, and slow economic development and job creation. This action could have a wide-ranging impact on the entire Internet ecosystem, not just on broadband service providers. Decades of bipartisan support for applying a light-regulatory touch to the Internet would be undone. Thus, over the past few months, nearly 300 Members of Congress—Democrats and Republicans—have expressed their opposition to Title II broadband regulation.

As clearly reiterated in the *Comcast* decision, the Commission's authority is limited to what Congress gives the agency. Therefore, a new regulatory framework for broadband should be determined by Congress, not the Commission.

IV. The Rationale for Title II Broadband Regulation is Flawed

There is a fear among some that broadband Internet access service providers may, at some point in the future, become the gatekeepers to the Internet by either favoring or thwarting the transmission of content depending on the source. However, the flood of new

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[5] *Comcast Corp. v. FCC,* No. 08-1291, D.C. Cir., Apr. 6, 2010.

broadband-enabled applications, services, and devices being released daily indicate that this fear is not based in reality.

The U.S. Department of Justice (DOJ) recently acknowledged that "most regions of the United States do not appear to be natural monopolies for broadband service."[6] In its filing, DOJ strongly cautioned the Commission to consider the impact on investment before adopting any regulations:

> Although enacting some form of regulation to prevent certain providers from exercising monopoly power may be tempting with regard to such areas, care must be taken to avoid stifling the infrastructure investments needed to expand broadband access. In particular, price regulation would be appropriate only where necessary to protect consumers from the exercise of monopoly power and where such regulation would not stifle incentives to invest in infrastructure deployment.[7]

Disputes that have to be handled by regulatory agencies and in the courts can take years to resolve. Even the Commission's Broadband Task Force recognizes that "[t]imely and predictable dispute resolution is critical to private investment in deployment."[8] Thus, the Chamber notes that consumer outrage and bad publicity often swiftly punishes bad actors and, in other situations, encourages disputing parties to resolve their disagreements quickly. In the few instances where there have been disputes between broadband companies, those disputes have been worked out in days, weeks, or at most several months. Additionally, broadband service providers are committed to transparency and are constantly working on ways to communicate more effectively with their consumers. Without evidence of a market failure that justifies government intervention, the Chamber opposes burdening this dynamic industry with a regulatory regime based solely on the fear of what may happen in the future.

V. Regulation of the Internet Jeopardizes Jobs and Investment

Jobs and new business opportunities are being created because broadband service providers are investing tens of billions of dollars every year to upgrade their networks allowing for higher speeds and greater capacity, and, at the same time, innovative broadband-enabled applications, services, and devices are being developed.

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[6] *Ex Parte*, United States Department of Justice, Jan. 4, 2010, GN Docket No. 09-51, at p. 28, *available at:* http://fjallfoss.fcc.gov/ecfs/document/view?id=7020355122.

[7] *Id.*

[8] FCC Broadband Task Force, "Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan," GN Dkt. No. 09-51, at p. 13, Dec. 16, 2009, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295259A1.pdf.

It will take up to $350 billion to make broadband universally available in the United States, according to the Commission's Broadband Task Force.[9] The vast majority of this spending will come from the private-sector. A recent paper released by the Advanced Communications Law & Policy Institute supports estimates that broadband service providers will commit at least $30 billion annually in capital expenditures on broadband alone between 2010 and 2015, resulting in the creation or sustainment of 509,000 jobs.[10] These investments, in turn, will spur capital expenditures by others.

A business, regardless of size or location, can use broadband technology to sell to customers around the country and the world. Connected Nation—a non-profit partner of the Chamber—estimates that 17.5 million Americans who do not work—including more than 3.9 million retirees, 2.4 million homemakers, and approximately 3.9 million adults with disabilities—would join the labor force if allowed to telework using a broadband connection.[11]

VI. The Broadband Market is Highly Competitive and Must React to Consumer Needs

The intense competition between cable operators, phone companies, wireless carriers, and others for broadband customers requires providers to quickly respond to market developments by investing in their networks and developing innovative new products and services. All broadband Internet service access providers manage their networks to ensure that their customers have the best Internet experience possible. To accomplish this, providers need the flexibility to quickly and adeptly maximize the reliability, security, and speed of their networks. The ability to offer differentiated services is essential and should be permitted as long as the discrimination is not unjust or unreasonable.

VII. Conclusion

The Chamber urges the Commission to refrain from imposing a new, burdensome regulatory regime on broadband Internet access service providers that would create regulatory uncertainty. Given these turbulent economic times and the enormous cost of building out broadband infrastructure, the United States cannot afford policies that would hinder private-sector investment in this critical technology.

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[9] FCC Broadband Task Force, "Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan," Sept. 29, 2009, *In the Matter of Development of a National Broadband Plan for Our Future*, GN Dkt. No. 09-51, at p. 45, *available at*: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf.

[10] Charles M. Davidson and Bret Swanson, *Net Neutrality, Investment & Jobs: Assessing the Potential Impacts of the FCC's Proposed Net Neutrality Rules on the Broadband Ecosystem,* June 2010.

[11] Comments of Connect Nation in Response to National Broadband Plan Public Notice #3, GN Docket No. 09-51, at p. i (filed Sept. 22, 2009).

Sincerely,

William L. Kovacs